A Chance

The Story of Coal Seam Gas Mining in Northern NSW
There was a home-grown farmer; he was known as ruse’s son,
His days were filled with cotton modules, crops and cattle runs,
And in autumn by the stars he picked and calculated yields.
He didn’t dream of big bank cheques or holidays on distant shores,
His heart was set on a simple life; producing meat and barley stores.
He was a quiet fellow; he ambled softly through his days,
With the company of dry dirt roads and whispering waterways.
He loved his country life and he had chosen it with glee,
For though a thousand miles from anywhere he was in serenity.
He loved the cattle murring as the wind embraced the eucalypts in dance,
He’d taken a chance on paddock life, but it was a certain chance.
Santos was a company with cash stocks all around,
Which it wrestled from the veins of the earth below the ground.
It bathed itself in waves of gold and tossed riches at famished friends,
Funding small town soccer clubs, and jobs and roads from dividends.
It sucked the state of energy and yet it promised “cheaper” power,
And it covered up its conscience in a foggy, dusty shower.
ruse’s son became concerned, and soon his neighbours joined his cause,
As sodium was seeping from the heart of Santos bores.
And it trickled and it crippled till the mud had turned to sand,
But no numbers and no words explained the desecrated land.
Santos regretted - and continued pumping by the tonne,
They said “Any chance of contamination is an unlikely one.”

And the choir of time sang on to the beat of an oil rig,
Santos sapped the land until there was nothing left to dig.
It bought the town and fit out workers in the homes,
And the locals had to leave as the bank foreclosed their loans.
lady justice scolded Santos for its broken law,
But armed with only words she could scold but nothing more.
And poor young ruse’s son, he was infected by the blight,
And left his barley for a desk job with no cattle herd in sight.
His medicine was charring but he could feed his kids with ease,
Albeit away from the land where the wind danced with the trees.
Gates were locked, and people begged to be given but a chance,
But the choir of time wailed on in a desperate, deathly trance.
The Government was distanced and at a dearth of what to offer,

But it was soothed by the Santos’ cash collecting in its coffers,

And with the heat of election like a bushfire down its back,

It sought money and appeal to win the vote count down the track.

So weighing politics against principle, it meekly wagered on,

In a silence that was shallow and a wisdom that was wrong.

But what was the wisdom that would win anything of worth?
So as our small towns start to wither and our home-grown lose their grip,
What will become of this Sunburnt Land and what we know of it?
What shall we tell our children if our fields shrivel into dust?
When our levy banks have crumbled and the pickers turned to rust?

Though the people of the outback may be fairly few in number,
They’re the ones who give us bread and meat to satisfy our hunger.
The mines will give us power until they’ve splintered every grain of sand,
Leaving the countryside a ghostly, harrowed, haunted tip of land,
And with the vicious taste of sodium ever present on your lips,
You will realise that your livelihood depended on all of this,
And when ruse’s grandson speaks to you, it is then that you will see,
“For them the chance was small, but it was big for you and me.”
A Chance – Rationale

Introduction

My poem, A Chance, is a representation of the problems associated with the operation of the coal seam gas industry in Northern NSW. My initial understanding of the issue was from an agricultural viewpoint – being that the Coal Seam Gas industry posed a threat to the quality of agricultural land, and the viability of Australian agriculture. I therefore had originally framed the problem as “How can agricultural interests be protected from the coal seam gas industry?” However, it did not take long before the Unravelling Complexity course prompted me to consider this issue from other viewpoints and have regard to the wider implications of the Coal Seam Gas industry. I began to look at why the industry so often finds itself in conflict with the communities in which it operates, local landowners, environmentalists, and, on occasion, the NSW Government. Ultimately, I discovered that the problem is broader than protecting agricultural interests. I thus rephrased my problem as “What are the ethical responsibilities of the coal seam gas industry, and how should they be effectively recognised?”

Through examining the issue in the context of topics covered in the Unravelling Complexity course, I discovered that the ethical role of the coal seam gas industry in NSW is convoluted due to fear, communication problems, emotional interests, and power imbalances. I
began to explore and understand how, as Garbiele Bammer identified, it is important to do understand how problems are connected. Ultimately, however, I decided that the coal seam gas industry has an ethical duty to those it is likely to impact, and that due to the evidentiary issues in determining the risks involved in coal seam gas extraction, the industry should cease its activity until widely accepted evidence is obtained. However, I had to go further than this. Many interest groups have been calling for restrictions or cessation of the industry’s operations, but so far minimal action has been taken. In assessing the legal context of the problem and the effective ways of mobilising stakeholder action to invoke change, I concluded that interests groups need to aggregate their support for change and employ psychological and legal methodologies to ensure that the Government pushes the industry to abide by its ethical obligations.

In deciding how to convey my findings, I wanted to employ a format which could effectively touch on the emotional side of the debate which is often lost in the media, emphasise the importance of power imbalances, and “unravel the complexity” in a way that was accessible to both rural an urban audiences. An illustrated poem seemed an obvious method by which I could achieve these goals. Poetry and photographs allow plenty of scope for exploration of narratives and emotions, and bush poetry has historically been used to bridge the divide between rural and urban Australian demographics. Banjo Paterson, Dorothea Mackellar, and Henry Lawson are examples of “bush poets” whose work has been memorialised as great Australian literature that pervades the city/rural divide. Whilst I cannot expect to measure to the standard of these poets, I hope that the messages expressed in A Chance help the reader to understand why the Coal Seam Gas industry has generated such extensive concern throughout rural NSW, the ethical obligations of the industry, and how stakeholder interests and communication methods can be assessed and balanced in formulating a solution to the problem.

Defining and Assessing the Problem
From the Outset – A Confirmation Bias?

I approached this problem with preconceived ideas. Having grown up on a farm in Northern NSW, I had adopted the view that coal seam gas companies were encroaching on the natural justice rights and freedoms of agriculturalists. However, in being pushed to consider the viewpoints of different stakeholders, the need for balance, the historical context, and the evidentiary basis for the debate, I soon realised that I could not hope to “unravel” the problem unless I recognised and assessed competing interests. Particularly, week eight’s focus on establishing an evidence base pushed me to consider whether my perspective might be entirely dictated by a confirmation bias. Whilst I accept that it probably is, I do think that a more objective truth can be realised by accepting one’s biases and seeking out for critique alternative viewpoints whilst approaching a complex problem. Therefore, I focused my project on the roles and interests of different stakeholders in the Coal Seam Gas debate, their relative power, interactions, and the motives that justify their behaviour. This is explored in *A Chance*, which is told in a narrative format so as to most effectively identify and explore the interests of different stakeholders in each stanza.

The Power Imbalance

“[There is] secrecy employed by Santos and...disinterest shown by the NSW government.”

David Quince, Farmer from the Liverpool Plains, NSW.

*A Chance* explores the power imbalance between stakeholders in the context of the NSW Coal Seam Gas industry. This power imbalance is evidenced through the grammar of the poem, as Santos is the only character to enjoy capitalisation. This visual representation of the power imbalance is designed to make the reader feel uncomfortable and look for meaning in this simple ignorance of basic grammatical
rules. This technique provides a useful frame for the narrative of the poem, which is designed to emphasise the power imbalance between stakeholders in the coal seam gas industry context by casting a clear perpetrator and victim relationship. The narrative accentuates the role of ruse’s son, the characterisation of all farmers, as the most powerless person in the context of the Coal Seam Gas industry, but ironically also the person with the most to lose from Coal Seam Gas activities. Indeed, given the susceptibilities of agricultural land to damage from the sodium extracted from coal seam gas aquifers, private landowners have both the most to lose and the least power regarding control over coal seam gas extraction. The fact that ruse’s son is never named is further representative of his relative lack of power in the context of the poem. The narrative also tells of the relative power of the NSW Government, propelled by the financial power of the Coal Seam Gas industry and the electoral power of voters who, for the most part, don’t live in rural areas. It also tells of the lack of power of ‘lady justice’, or the judicial system, whose words (in direct contrast to the oft-quoted “the pen is mightier than the sword”) are not enough to conquer the exploitative activities of the coal seam gas industry. The second last sentence of stanza four summarises the power imbalance of these major players, and ponders the question I came to consider as central to identifying the ethical obligations of the coal seam gas industry: whose interests ought to be prioritised?

This power imbalance between relevant stakeholders in the Coal Seam Gas debate is born of the legal context from which the Coal Seam Gas industry derives its power. S 6 of the *Petroleum (Onshore) Act 1991* (NSW) provides that “All petroleum…existing in a natural state on or below the surface of any land in the State is the property of the Crown, and is taken to have been so and always”, and that “All Crown grants and their leases and every license and other instrument of title under any Act relating to lands of the Crown…are to be regarded as containing a reservation to the Crown of all petroleum…existing in a natural state on or below the surface of the land comprised in the instrument concerned”. In this sense the power regarding extraction of coal seam gas lies squarely with the NSW government, even when privately held land is involved. This status quo is further confirmed by additional sections of the *Petroleum (Onshore) Act 1991* (NSW) (‘The Act’). Pt 3 of The Act allows the NSW Minister for Resources and Energy to grant titles for Coal Seam
Gas companies to access petroleum under privately owned land, in the absence of public consultation. Further, *The Act* only gives landowners a very symbolic power regarding their ability to refuse coal seam gas exploration on their land: landowners who want to contest entry of the coal seam gas companies onto their land can take the matter to arbitration, but at their own cost (s 69O(1) of *The Act*). S 69C(1) of *The Act* also requires coal seam gas companies to enter into an “access arrangement” with landowners before conducting work on privately held land, however if such an agreement cannot be achieved voluntarily, an arbitrator is able to impose one on the parties under ss 69L and 69S. In this way, the legislation underpinning the Coal Seam Gas industry ensures that the power of the respective stakeholders is unequal to the losses they may incur from poor gas extraction practice (Figure One).

![Figure One: Legal Relationship of the Parties. Arrows show how power is used.](image)

However, I was soon pushed to reconsider the legal perception in light of the discussion about “confirmation bias” which formed part of the context of the “Establishing an Evidence Base” section of the course. I believe that a more objective truth can be obtained if we are aware of our biases and attempt to challenge them (as per the refutation theory discussed in the “Establishing an Evidence Base” panels). I therefore sought to challenge my previous understanding of the power imbalances in the coal seam gas debate. I considered other stakeholders and how they engage with the
problem, and the need to balance their interests. I soon discovered that the legal context only shows a small portion of the implications of power imbalance between key stakeholders in the Coal Seam Gas debate. I noted this discovery in *A Chance*, where I noted that the NSW Government isn’t just saying “no” to farmers’ concerns as I had previously thought, but rather that they had electoral and economic reasons for doing so. I demonstrated this through the use of a number of techniques. For example, I identified the power and interest levels of environmentalist concerns about Coal Seam Gas, by asking whether we should favour “the earth” over other stakeholders such as “santos” and “the people” (Stanza four). *A Chance* also asks about future generations: “What shall we tell our children if our fields shrivel into dust?”. By then adopting a more certain tone (“When our levy banks have crumbled and the pickers turned to dust”), the poem shows that future generations have no power when it comes to the coal seam gas industry, though they will endure the repercussions of coal seam gas mining. The poem also discussed the interests of local community members, who at once benefit as “famished friends” who enjoy the jobs and community services funded by coal seam gas companies, but also end up forced to leave their homes due to increased price of living resulting from the industry’s pressure on local services. In making these points through questions, the poem asks the reader what they think of the context, rather than couching the points I make exclusively in arguments that support my point of view. This represents the complexity of the competing interests that exist in the context of the industry. In this way, when non-legal relationships are considered, the problem becomes even more complex (Figure Two). In realising this, I both delved deeper into the complexity of the problem and started to develop the understanding necessary to unravel it.
The second aspect of the problem of identifying the ethical obligations of the coal seam gas industry that I came to identify was the evidential difficulties involved in the industry’s operation. As part of attempting to challenge my preconceived ideas about the risk involved in Coal Seam Gas extraction, I sought out data on the likelihood of contamination of groundwater supplies and harm to the environment occasioned as a direct result of coal seam gas extraction. The results I found were quite alarming. Despite extensive rhetoric on there being a “low” or “high” chance of contamination, there is no actual data on the probability of gas leaks and their long term impacts. Some scholars and scientists in particular have expressly identified that the chance of contamination occasioned due to coal seam gas activities is unknown and unpredictable. Ultimately, the problem with identifying the ethical obligations of the coal seam gas is rooted in the fact that there are different ideas regarding whether it is appropriate to take the “chance” on this industry given the...
industry’s impact on various stakeholders. It is for this reason that the poem I wrote centred on the notion of “a chance”. The poem explored different contexts within which a chance could operate in each stanza, so as to provoke the reader’s consideration on whether it’s okay to take a chance in the context of the coal seam gas debate or not. The juxtaposition of these changing “chances” with a narrative of despair is designed to evoke fear in the viewer and uncertainty about the industry. In this sense, the poem reflected the realities of what I discovered as core to the problems in the coal seam gas debate; being that a lack of quantifiable data and poor communication breeds uncertainty and ultimately, a “chance”, that at this stage is too great.

- **Justifying the Industry**

  “So what are the risks? The major one is that the gas industry’s growth is curtailed, that our plans to reduce greenhouse emissions hit a major snag; and the CSG-driven rejuvenation of regional communities stalls.”

  - Rick Wilkinson, Miner.

The question therefore became: can you justify an industry which clearly has many benefits, because it has an undefined chance of severe repercussions? Ultimately, I concluded that you cannot. Although this may just be my confirmation bias speaking, I do believe that there are some (relatively) objective points which justify this conclusion.
Firstly, the coal seam gas industry has ruined extensive areas of viable farmland in the United States, and now that the coal seam gas industry there is finished, the once arable land is good for nothing. Therefore, whilst we have no quantifiable data on the likelihood of contamination from aquifers, we know that the chance is not far-fetched and as such, ought to be taken seriously. Furthermore, we know that the potential effects of the industry are disastrous and wide-reaching, so even if the chance is not huge, the magnitude and spread of the potential repercussions of the industry is such that the industry should not proceed as it currently operates.

Secondly, the benefits derived from the coal seam gas industry are short-term. Investment in rural communities from coal seam gas mining is directly sourced from mining profits. Thus, when the resources run out, so too does the investment in regional communities. In turn, the current Australian rural exodus will be exacerbated, as people will have had to have left rural areas due to the increased price of living occasioned by the increased demand for services created by the coal seam gas industry, and the people who have come in their place will leave when the wealth of the mines is drained. Furthermore, coal seam gas is not going anywhere and NSW is in a good economic position – therefore, it is both possible and advisable that coal seam gas extraction is delayed until scientific progress and regulatory methods have developed to the point whereby the safety of the industry can be 100% assured. In response to the points raised in the *Navigating the Future* discussion that restricting exploration can also restrict progress and the week two discussion about “compensating feedback” when we push too hard, I do not feel these are destructive to the quality of the argument in favour of ceasing the coal seam gas industry for the moment. In the context of the coal seam gas debate there is clear scope for further scientific experimentation which will not affect extensive underground water supplies which would allow for progress without the risk poses by the coal seam gas industry in its current state.
These points were highlighted in *A Chance* in a number of ways. By employing question format, the last stanza emphasises the weight of the risk taken if the coal seam gas industry proceeds. Furthermore, by referring to “our children” and “ruse’s grandson”, it draws upon a priority which is of universal importance – that of the future. Human Beings innately want to guarantee their future and that of their families, and thus the poem seeks to contextualise the coal seam gas industry by having regard to the broader context within which humanity exists. Additionally, the juxtaposition of individual concerns in the preceding stanzas with a broadened, universal concern in the final stanza emphasizes the extent to which the consequences of coal seam gas exploration are wide reaching and pervasive and thus accentuates the importance of treading carefully when it comes to supporting the industry.

**Solutions?**

I therefore came to the conclusion that, from an ethical perspective, there must be increased certainty before the coal seam gas industry continues to extract gas from coal seams. This message came across clearly in the final stanza of *A Chance*. The question remaining, however, is how this might be achieved? Further, in line with the *Navigating the Future* and *Towards a Balance* class discussions, if the ideal solution cannot be achieved, what is the next best alternative/most practical solution? I did not explore this in *A Chance* because I believe that poem itself heavily implied that a restructuring of the power imbalance between stakeholders was necessary, and that the appeal of the poem was in its exploration of the issue rather than the nuances of the solution. Furthermore, the poem was designed to get the reader thinking about solutions and to critique the issue itself – I felt that by pushing solutions on a reader explicitly, the complexity of the issue would be lost as I would simply be enforcing my point of view upon the responder.
Given that the power imbalance which is at the root of the coal seam gas debate is enshrined in law, a logical starting point for addressing the issue would be through law reform. Specifically, there is scope in the Petroleum (Onshore) Act 1991 (NSW) for greater protection of environmental and agricultural interests as a means of addressing the ethical problems associated with the coal seam gas industry. Ideally, The Act would be amended so that the Government relinquishes its power to minerals under the land’s surface, or gives landowners ultimate rights to refuse entry onto their properties for the purpose of coal seam gas exploration and extraction. However, politics suggests that it is highly unlikely that the government would relinquish its power on such a valuable source of wealth. Therefore, law reform proposals would be more effectively directed at restricting the scope of permissible coal seam gas explorations and extractions. Notably, s 64 of The Act ought to be repealed, as it stipulates that “any requirement of or made under the Environmental Planning and Assessment Act 1979 that an application for development consent to use the land for the purpose of obtaining petroleum be accompanied by the consent of the owner of the land is of no effect”. This would ensure that where the legislature has considered it important to consider environmental factors before land is exploited, such factors are regarded before damage is inflicted to privately owned land. Further, it is recommended that the legal sanctions imposed for unsafe coal seam gas extraction practices under the law are increased so that they act as a powerful deterrent for any company seeking to mine coal seams, and push repeat offenders to bankruptcy thus weeding out malpractice. In March 2014, Santos was fined a mere $1500 following a pollution incident in NSW by the Environmental Protection Authority, which is a statutory body under the NSW Government. It is recommended that the NSW Environmental Protection Authority’s sanctioning power is repealed, and that in its place the Petroleum (Onshore) Act 1991 is amended so as to create a civil liability for all environmentally damaging activity which occurs due to malpractice and poor administration of coal seam gas extraction and impose sanctions enforceable in the Land and Environment Court calculated at the same rate as damages generally in litigation – being the reflective of the damage incurred and payable directly to those damaged rather than to the NSW Government. I would further recommend that the Petroleum (Onshore) Act 1991 is amended to impose a list of relevant considerations for lawmakers in deciding cases based on violations of the Act. These considerations would include the interests of relevant stakeholders and their relative power, the risks
involved in the operation, the communication carried out about those risks, the research into those risks conducted, and the success of any attempts to make amends for damage done. Subsequently, it would be mandatory to consider these factors under administrative law relevant to the applicable court, and if these factors were ignored the court would fall into jurisdictional error whereby the case would have to be heard again. Injunctions would therefore be an increasingly appropriate remedy to stop exploration where contamination and subsequent violation of *The Act* appeared likely.

Problematically, these law reform options depend on government intervention which, whilst increasingly forthcoming, is not highly likely given the wealth that governments can obtain from the coal seam gas industry. Therefore, the most effective legal remedy available to aggrieved groups might be through a class action in the tort of negligence or under s 18 of the Consumer Code for false and misleading conduct. Problematically, however, both of these means of addressing the issue require damage to have already been done before action can be taken. Therefore, ultimately lobbyists need to adopt a form of lobbying that is most likely to impede current coal seam gas operations and attract Government support.

I therefore came to the conclusion that changes to the coal seam gas industry can only occur by appealing to the conscience of the government and forming a cohesive opposition group to coal seam gas mining. But how can this be done? Throughout the course, there has been an extensive focus on how to strike balances and engage stakeholders. There are a considerable number of groups who oppose coal seam gas exploration in the current conditions: Australian and American farmers, The Greens, environmentalists, regional communities, the lock the gate alliance, and some local councils. From the *HarborCo* activity in the *Towards a Balance* workshop it was made clear that if these groups can compromise their differences are realise there similar goal when it comes to coal seam gas exploration, they will have more sway with government and other authorities as they will constitute a bigger and more cohesive
opposition. This thesis was supported by the *Stakeholder Engagement* panel and workshop. This seems achievable in the context of the coal seam gas debate, as greens and farmers are already starting to work together to an unprecedented level. The Lock the Gate alliance has brought together environmentalists, community members and farmers. The next logical step would be for all of these groups to stop identifying in opposition but identify under a single banner so as to present a cohesive image of anti-coal seam gas interests.

But how can this single lobby group effectively change government and corporate behaviour? The size and cohesion of the group is likely to get results, but there is more that can be done to effect change. For example, Kate Reynolds’ psychological methodology from the Week Six Workshop demonstrated that change through lobbying is most likely to be effected when the appropriate authorities identify themselves as part of the community requiring assistance, and therefore feel obliged to change their behaviour if doing so would help address the problem. This methodology could be particularly helpful in the context of convincing the government to change its behaviour. Given that the government is popularly elected, appealing to their sense of community is a practice that could be adopted with relative ease in negotiations and protests. However, this methodology would also suggest that rather than barring politicians from community activities in protest, politicians should be encouraged to participate fully in the community despite any initial qualms with their behaviour so that their minds can effectively be changed. Consistent with Irene Gujt’s discussion in Week six, this would alter the power relationships between stakeholders to the point where the concerns of the anti-coal seam gas interests become more influential.

Problematically, this method only allows for change over time, but the coal seam gas issue potentially poses an immediate, short term threat. However, given the time needed for negotiation and realisation of lobbying potential, this appears to be the most feasible, albeit imperfect, solution. In the meantime, it is recommended that civil disobedience tactics continue to be used to impede coal seam gas mining and by extension, problems associated with coal seam gas.
Conclusion

True to the purpose of the *Unravelling Complexity* course, identifying the ethical responsibilities of the coal seam gas industry and the ways in which the honouring of these obligations might be achieved is complex and involves multidisciplinary perspectives. There is no perfect solution that is also feasible, but there are improvements that can be made insofar as power imbalance and effective communication are concerned. In making this argument, I am aware of my own biases, but hope that through a process of logical reasoning I have been able to achieve as objective solutions as possible.